TEACHING OF SIR HENRY MAINE, THE. *Paul Vinogradoff.* 20 L. Quart. Rev 119.
ULTRA VIRES AND ESTOPPEL. *Anon.* 44 Leg. Adv. 53.
VALIDITY OF AGREEMENT FOUNDED ON A NEW CONSIDERATION BUT GIVEN IN PAYMENT ON ILLEGAL CONTRACT. *Anon.* 58 Central L. J. 321.
WHETHER A CONSIDERATION IS NECESSARY TO A WAIVER. *Colin P. Campbell.* 58 Central L. J. 264.
WHETHER AN ATTEMPT TO BRIBE AN OFFICER WHO IS WITHOUT AUTHORITY TO ACT IS A CRIMINAL OFFENSE. *Anon.* Commenting upon one of the recent St. Louis bribery cases reported in 77 S. W. Rep. 560. 58 Central L. J. 281.

II. BOOK REVIEWS.

THE POLICE POWER. Public Policy and Constitutional Rights. By Ernst Freund, Professor of Law in the University of Chicago. Chicago: Callaghan & Company. 1904. pp. xcii, 819. 8vo.

In 1827, in the opinion in the case of *Brown* v. *Maryland*, Chief Justice Marshall introduced into our law the term "police power." A study of that case and the circumstances surrounding it leads to the conclusion that Marshall used the phrase merely as a synonym for the well-known "police laws," "regulations of police," etc. At any rate the term did not reappear in a judicial opinion until ten years later, after Marshall's death, in the case of *New York* v. *Miln*. By that time the abolition controversy had made the term familiar over the entire country. It had been seized on by the daily papers and political speakers, to express the "residuary sovereignty" of Madison. It is not surprising that this popular and wide-spread use had a marked effect upon the courts. In the License Cases we find Chief Justice Taney declaring that the police power of a state is "nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions." From this time on the police power has been given every phase of meaning, from the extended one of Taney to that of Mr. Hastings, who states that the "police power is a fiction."

The confusion in the use of the term has never been cleared up by the text-writers. The nearest approach is made in the present work by Professor Freund. The author explains his conception of the police power as follows: "The State places its corporate and proprietary resources at the disposal of the public by the establishment of improvements and services of various kinds; and it exercises its compulsory powers for the prevention and anticipation of wrong by narrowing common law rights through conventional restraints and positive regulations which are not confined to the prohibition of wrongful acts. It is this latter kind of state control which constitutes the essence of the police power." For the sake of clearness Professor Freund excludes from the police power all forms of State activity which do not operate by restraint and compulsion. But general statements are of little assistance in the discussion of this troublesome branch of our law. It is only by a detailed examination of statutes and decisions that this power can be at all understood. This examination is very carefully made by the present author. For this purpose he makes a three-fold division of the spheres of state activity: first, a conceded sphere, affecting safety, health, and morals; second, a debatable sphere, that of proper production and distribution of wealth, public convenience and advantage; third, an exempt sphere, that of moral, intellectual, and political movements. Professor Freund regards the first sphere as constituting the police power in its primary sense. Here is found an ever increasing amount of restrictive legislation, governed by principles which have become well established and which constitute a distinct branch of Constitutional Law. In the second sphere the police power is revealed, not as a fixed quantity, but as the expression of social, economic, and political conditions. Here it would be impossible to formulate general rules, and the examination of the author consists in showing what has been done, what has been attempted and has failed, and what is now being

accomplished. The last sphere embraces those individual rights which are secured by constitutional guarantees. Religion, speech, and press are exempt from police interference except to a slight degree in the furtherance of good order and morality. So far, however, little difficulty has been encountered in the mutual adjustments of these interests.

In the opinion of the reviewer much of the confusion in the subject has come from extending the term "police power" to embrace the second and disputed sphere of state control. But if the popular misuse of the term has become too deeply engrafted in legal works and opinions, to allow a more restricted use of the phrase, then the careful and definite division, now made prominent for the first time in a text-book, is absolutely essential to clearness.

In a few points one regrets that the discussion of the author is not more elaborate. The treatment of the police power in connection with the "Fourteenth Amendment" covers only two pages, and the "Commerce Clause" does not seem to have its just prominence. Still, in general, the treatment by Professor Freund is detailed and exhaustive. The author is to be congratulated on producing what is perhaps the best work on the subject.

TEXT-BOOK OF THE PATENT LAWS of the United States of America. By Albert H. Walker. Fourth edition. New York: Baker, Voorhis and Company. 1904. pp. cviii, 755. 8vo.

When the third edition of this work was published in 1895 the author stated in his preface that except in the event of the enactment of a new system of patent statutes "a necessity for another edition of this book cannot now be foreseen and, therefore, I present this edition to the bench and to the bar as probably my final contribution to the literature of the patent law." Since that time, however, Congress has amended the patent laws very extensively and has thus impelled Mr. Walker to issue this year the fourth edition; and he now hopes to continue his work from time to time in the future.

In all, six statutes have been passed, but the most important changes in the patent laws since the publication of the third edition are contained in the Patent Act of 1897, 29 Stats. at Large, Chap. 391, and in the Patent Act of 1903, 32 Stats. at Large, Chap. 1019. Before the Act of 1897, a prior patent or publication, in order to invalidate a patent or justify the refusal of an application, must have been made earlier in date than the time when the applicant made his invention. By the Act of 1897, the anticipation is sufficient if the device was patented or described before the date of the applicant's invention, or two years before his application.

Before the Act of 1897, if an invention were patented in a foreign country and also in the United States and the patent in a foreign country lapsed before that in the United States would terminate, it was held that the patent monopoly in the United States must cease at the same date as the monopoly in a foreign country. By the Act of 1897, the law on this point is changed, so that no patent shall be declared invalid by reason of its having been first patented in a foreign country, provided application for a patent in this country be made within seven months of the application in a foreign country.

One other important change was made by the Act of 1897. A uniform statute of limitation was established for suits and actions brought for the infringement of patents. There was a limitation to suits or actions previously, for it had been held by the Supreme Court that the statutes of limitation of the separate states should apply in suits, but it is certainly more satisfactory that the system should be uniform.

By the Act of 1903 the requirement that an application be made in this country within seven months after an application in a foreign country in order to secure the benefit of the Patent Act of 1897, has been changed so that the inventor is now given twelve months within which to apply for a patent in this country. By the same act, a change is made whereby the benefit of a *caveat* is extended to any person, and is no longer limited to a citizen of the United